

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0882, State of New Hampshire v. Anthony Johnson, the court on September 1, 2006, issued the following order:

The defendant, Anthony Johnson, appeals his convictions on four counts of aggravated felonious sexual assault, five counts of felonious sexual assault and one count of indecent exposure and lewdness. He argues that the trial court erred in permitting the State to present rebuttal testimony and the testimony of a Sexual Assault Nurse Examiner (SANE nurse). We affirm.

We review a trial court's ruling on the admissibility of rebuttal evidence under an unsustainable exercise of discretion standard. See State v. Hopkins, 136 N.H. 272, 275 (1992); cf. State v. Lambert, 147 N.H. 295, 296 (2001) (explaining unsustainable exercise of discretion standard).

Having reviewed the record and considered the arguments of the parties, we find no error in the trial court's decision to permit the State to present limited rebuttal testimony to address the defendant's testimony. See State v. Vandebogart, 139 N.H. 145, 165-67 (1994).

We also find no error in the trial court's decision to admit testimony by the SANE nurse. See State v. Emery, 152 N.H. 783, 789 (2005) (trial court's decisions with respect to alleged discovery violations or admission of evidence reviewed under unsustainable exercise of discretion standard); State v. DeCosta, 146 N.H. 405, 408-09 (2001) (expert testimony admissible to explain behavioral characteristics commonly found in child abuse victims but not to vouch for victim's credibility). Even if we were to assume, as the State has conceded, that the State failed to comply with all of the requirements of the version of RSA 516:29-b (Supp. 2004) then applicable, we find that the defendant has failed to establish that he was prejudiced by any technical noncompliance. See State v. Lambert, 149 N.H. at 296 (to establish that trial court's decision is unsustainable, defendant must demonstrate that the court's ruling was clearly untenable or unreasonable to the prejudice of his case).

Affirmed.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**